IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 1146/2006

(Ram Pratap Vs. State of Rajasthan & Anr.)

Date of Order : 19/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. S.S.Dhillon, for the petitioner.
Mr. Ashok Upadhyay, P.P.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 30.8.2006 passed by learned Sessions Judge, Hanumangarh (for short 'the revisional court' hereinafter) in Cr. Revision No.07/2005 whereby the revisional court while deciding the revision petition filed by the petitioner against the order dated 2.8.2004 passed by Additional Judicial Magistrate, Hanumangarh (for short 'the trial court' hereinafter) in Criminal Case No.401/2004 directed that petitioner Ram Pratap has to face the trial for the offences under Sections 341 and 323 IPC as also under Section 3 (1)(x) of the SC/ST (Prevention of Atrocities) Act (for short 'the SC/ST Act hereinafter) and the trial Magistrate

was directed to commit the case to the Court of Sessions. Aggrieved by the order, the petitioner has filed the instant petition.

The facts and circumstances giving rise to the instant petition are that the non-petitioner No.2 filed a complaint before the trial court. The trial court took the cognizance of the offences under Sections 323 and 341 IPC by order dated 18.9.2002. The complainant thereafter moved the learned Sessions Judge. The learned Sessions Judge by order dated 2.1.2003 directed the trial court to give its conclusion with regard to offence under Section 3 of the SC/ ST Act on the basis of the evidence available on record. By order dated 2.8.2004, the trial court declined to take the cognizance of the offence under Section 3 (1)(x) of the SC/ST Act and issued process for the offences under Sections 341 and 323 IPC. That order came to be challenged by the petitioner before the learned Sessions Judge. The revisional court instead of confirming the order or setting aside the order under challenge, without disturbing the order of the trial court directed that the petitioner has to face the trial for the offence under Section 3 (1) (x) of the SC/ST Act in addition to the offences for which the cognizance has already been taken. It was nobody's case that the trial court fell in error in not taking cognizance of the offence under Section 3 (1)(x) of the SC/ST Act. It is not the case that the revisional court suo motu revised

the order of the trial court. On perusal of the material available on record, more particularly from the order of the trial court taking cognizance, if at all the revisional court felt that some other offences have been made out then in view of the provisions of Section 398 Cr.P.C., the revisional court could have sent the matter to the trial court for further inquiry.

Section 398 Cr.P.C. provides that on examining any record under Sec. 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrate subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Sec. 203 or sub-section (4) of Sec. 204 or into the case of any person accused of an offence who has been discharged.

Learned counsel for the petitioner has relied on a decision of this Court in Gulab Jati and Ors. Vs. State of Rajasthan and Ors. 2003 (1) R.Cr.D. 101 (Raj.), whereby this Court directed that the revisional court cannot direct the trial court to take cognizance. The revisional court can direct further inquiry into the matter.

Looking to the provisions of Section 398 Cr.P.C., the revisional court exceeded its jurisdiction by directing the petitioner to face the trial for the offence under Section 3 (1)(x)

of the SC/ST Act apart from other offences for which the trial court took the cognizance and to this extent the order of the revisional court deserves to be set aside.

In the result, the misc. petition is partly allowed. The order of the revisional court dated 30.8.2006 to the extent directing the petitioenr to face trial for the offence under Section 3 (1)(x) of the SC/ST Act is set aside and the matter is remanded to the trial court for further inquiry as envisaged under Section 398 Cr.P.C. and pass a fresh order.

(H.R.PANWAR),J.

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